

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

MM Docket No. 95-176

TO: The Commission

**Comments of the
National Association of Broadcasters**

NATIONAL ASSOCIATION OF
BROADCASTERS
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Summary

NAB generally supports the Commission's approach to implementing the captioning requirements of the Telecommunications Act. As the *Notice* recognizes, most programming on television stations is already captioned.

The Commission proposes to make program providers responsible for captioning, despite the House Report which made clear Congress' view that captioning obligations should be placed on producers. The *Notice* refers to no reason for departing from Congress' expectations. If the Commission determines that stations must have captioning responsibility, that should be construed — with respect to programs they do not produce — as obliging them only to contract for captions in programs, not to insert captions if particular programs do not have them.

The eight-year transition schedule for new programming suggested in the *Notice* appears to be reasonable. The Commission should not, however, require captions of any particular type of programming first. In fact, an NAB survey shows that local stations overwhelmingly are captioning news programming even without regulations.

If cable systems and other video programming distributors are permitted to count captioned programming on broadcast stations towards their own captioning responsibilities, the Commission should impose a reciprocal obligation that they then carry all local television stations. Allowing cable systems and other multi-channel providers to benefit from the captioning efforts of broadcasters without requiring them to undertake any obligation to those stations would result in the same regulatory imbalance that Congress sought to redress in the Cable Act.

Programs that come to stations with usable captions will be transmitted with those captions, and regulations requiring stations to do that are unnecessary. However, the fact that a program may once have been captioned does not mean that those captions are available or usable

for subsequent airings, and stations should not be required to repair or replace captions on such programs.

The Commission should await marketplace developments before adopting captioning requirements for the vast amounts of uncaptioned library programming. As captioned programming becomes a larger part of program libraries, the amount of uncaptioned programming on the air will decline. For older programs that may air on only a few stations, it would be economically burdensome to require captions to be inserted, and doing so would almost certainly mean that those programs would not be aired.

The Commission correctly concludes that, in evaluating exemptions, it should focus on the cost to individual program suppliers and not consider assets that their corporate parents may have. The Commission should provide exemptions for certain categories of programming. Commercials, infomercials, and political advertising should be exempt from captioning requirements. Commercials frequently include textual and pictorial elements that not only provide information to hearing-impaired viewers, but which also could be obscured by captions. For political programming, requiring stations to add captioning would run afoul of the no-censorship provisions of the Communications Act.

While most national and regional sports programs are captioned, the Commission should not extend captioning requirements to locally produced sports coverage. The Commission should also allow stations an exemption from captioning weather programming if they demonstrate that they include sufficient amounts of textual and graphical material in their weather programs to make them accessible to hearing-impaired individuals.

Finally, the Commission is correct in declining to propose technical or quality standard for captioning at this time.

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**Comments of the
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The National Association of Broadcasters (“NAB”)¹ submits these comments in response to the Commission’s *Notice of Proposed Rulemaking*. The *Notice* generally proposes an appropriately measured path to meet the obligations imposed on the television industry in the captioning provisions of the Telecommunications Act of 1996. The *Notice* (§§ 12-14, 17) acknowledges that most programming on broadcast stations is already captioned. The Commission also recognizes the substantial burdens that captioning requirements may impose on some stations and for certain types of programming and that Congress intended for it to encourage greater amounts of captioning while avoiding undue burdens on providers.

NAB’s comments on the specifics of the Commission’s proposals follow:

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

I. Responsibility for Captioning

The House Report on the Telecommunications Act makes clear that it was Congress' understanding that the obligation to insert captioning into programming would generally rest with producers, recognizing the burdens and inefficiencies that would be created if each station were obliged to caption programs they did not produce. H.R. REP. NO. 204, 104th Cong., 1st Sess. 114 (1995). The *Notice* (§ 30 n.88) indeed quotes this language. Nonetheless, the Commission proposes to place the responsibility for captioning on program distributors. The reason it chose to deviate from Congress' apparent intent is unclear, for the *Notice* (§ 28) only states that "[w]e believe that programming providers are in the best position to ensure that the programming they distribute is closed captioned because of their role in purchasing programming from producers." The fact that most programming aired on broadcast stations is obtained from another source was hardly unknown to the Congress when it expressed its view that captioning obligations should fall on producers. Thus, the reason posited by the Commission for placing the captioning obligation on stations does not provide a basis for departing from Congress' contrary views.²

Not only is the Commission's proposed allocation of captioning responsibility different from that which Congress envisioned, it is also unrealistic to expect individual stations to be responsible for captioning programming that they do not produce. The economic burden of requiring full time captioning staffs for every station would be enormous. In many instances,

² The Commission also suggests that "the direct link between consumers and their video providers is an important consideration for ensuring compliance with our rules." *Notice* § 28. We are unsure precisely what the Commission means. If the Commission intends to suggest that stations would be obliged to insert captions into programming that they did not produce based on viewer complaints, stations should have no such obligation.

stations may not have possession of programs substantially in advance of their airing and thus will not know until the last moment whether a particular program is captioned. Because stations have no control over production of large amounts of programming, they should not be required to guarantee that such programming include captions.

If, however, the Commission intends by its proposal only to require that stations be responsible for captioning on non-exempt programming they produce and for contracting for captioning on programming they purchase, that sort of requirement may not be unreasonable. If a station requires a program producer to supply it with captioned material, the occasional failure of the producer to supply captioned material should not result in the station's having to supply captions, or in the station's being deemed not to have met its captioning responsibilities. Similarly, stations should not be required to caption advertising and infomercials or similar programming which the station is paid to air and which is produced by others not under the station's control.

The Commission, therefore, should revise its proposal to place the obligation to insert closed captions on program producers as Congress expected, rather than distributors. If it determines that captioning obligations must be placed on stations, the Commission should make clear that, with respect to programming that stations do not produce, their obligations are limited to contracting for captions in non-exempt programs they acquire or otherwise do not produce.

II. Captioning of New Programming

The *Notice* includes a number of proposals concerning captioning of new programming. As the Commission recognizes, there are a number of issues that it needs to address concerning how captioning rules will be implemented in addition to establishing an overall implementation schedule for captioning requirements.

A. The Proposed Transition Schedule

The Commission proposes an eight-year transition period, at the end of which it would require that all new, non-exempt programming contain captions. *Notice* ¶ 41. Assuming that the Commission permits reasonable exemptions from captioning requirements and does not adopt captioning technology and quality standards that would increase the costs and difficulty of captioning, NAB believes that an eight-year period during which stations can “ramp up” their captioning capabilities is reasonable.

As the Commission recognizes, it is impracticable to impose immediate across-the-board captioning requirements. Although the survey NAB submitted in its comments on the *Notice of Inquiry*³ showed that most stations provide some closed captioning for their local programs, there are stations that do not have this capability now. Even to install electronic newsroom captioning may require stations to replace their current newsroom computer systems, a process that may take some time. Further, the supply of stenographic captioners is not unlimited and there are many communities where this capability does not presently exist. The measured transition schedule proposed in the *Notice* would allow stations the time needed to adopt new technology and for new captioning personnel to be trained. In addition, it may allow time for the development of new captioning technologies that will allow more accurate and complete captioning of programs at lower costs.⁴

³ Fratrik, *The Television Industry's Provision of Closed Captioning Services in 1996*, submitted with Comments of the NAB, MM Docket No. 95-176 (March 15, 1996).

⁴ The Commission suggests a ten-year transition period as an alternative proposal. *Notice* ¶ 41. Particularly for stations in small markets with lower revenues and small stations in large and medium markets, the additional time to implement widespread captioning could
(continued...)

An abrupt implementation of universal captioning requirements would impose very high costs on stations, requiring either numerous exemptions or forcing valuable programming off the air. The Commission properly concludes that this would not serve the public interest.

The Commission also asks for comment (*Notice* ¶ 45) on the time period for measuring compliance with captioning requirements. The Commission should take into consideration that there may be seasonal or other variations in stations' programming and that looking at only a short-term "snapshot" of a station's captioning efforts may distort the station's actual captioning accomplishments. At the same time, too long a period for assessing compliance would result in substantial record-keeping burdens for regulatees. NAB believes that assessing compliance with captioning requirements on a quarterly basis would be an appropriate balance between these two concerns. Determining compliance on a quarterly basis would ensure that regulatees keep the captioning requirements in mind, but would not burden stations or other providers if the programming in a particular brief period is not captioned.

B. The Commission Should Not Establish Program-Specific Captioning Requirements

Paragraph 42 of the *Notice* asks whether program providers should decide which programs to caption to meet the captioning requirements, or whether the Commission should place a higher priority on certain types of programming. There is no need for the Commission to do this,

⁴

(...continued)

be beneficial. Even if the Commission adopts the proposed eight-year schedule, it should keep in mind that reduction of Federal support for captioning and other developments may affect stations' ability to meet the deadlines, particularly in later years when the percentage requirements are higher. Indeed, the Commission acknowledges that reduction in Federal funding for captioning could affect the amount of captioning that can be provided. *Notice* ¶ 46. The Commission should thus allow itself and licensees some ability to adjust captioning deadlines in light of marketplace developments.

and it instead should allow stations to decide which programs should be captioned, depending on their capabilities and market conditions. Of the stations responding to NAB's survey of closed captioning in 1996, 81.5 percent of those which captioned any local programming provided captions for news programs.⁵ Since television stations now are focusing their captioning efforts on local news programming — the programming that would appear to be of the greatest public interest benefit — there is no need for regulation of their captioning choices. In the absence of any evidence of a problem, the Commission should avoid adopting regulations that burden both it and regulatees with enforcement responsibilities that will not result in benefits to the public.

C. Captioned Broadcast Programming Carried by MVPDs

A number of issues are raised in the *Notice* about captioning requirements for multi-channel video program distributors (MVPDs). NAB takes no position on the question of whether captioning percentages for cable systems and other MVPDs should be calculated on a channel-by-channel or system-wide basis. Either way, the Commission must address issues concerning captioned programming on broadcast channels retransmitted by other video distributors.

The must carry provisions of the Communications Act require cable systems to carry closed captioning information included on line 21 of the Vertical Blanking Interval on every broadcast television signal that they carry. 47 U.S.C. §§ 534(b)(3)(A); 535(g)(1); *see* 47 C.F.R. § 76.62(e), (f).⁶ Because of this, the *Notice* (§ 43) points out that a cable system could meet its

⁵ Fratrik, *The Television Industry's Provision of Closed Captioning Services in 1996*, submitted with Comments of the NAB, MM Docket No. 95-176 (March 15, 1996) at 4

⁶ This requirement also applies to commercial television signals carried by cable systems pursuant to retransmission consent agreements. *Implementation of the Cable Act of 1992: Broadcast Signal Carriage Issues*, 8 FCC Rcd. 2965, 3004 (1993), *recon. denied*, (continued...)

captioning obligations in the early years of the proposed implementing schedule solely by relying on the captioning on broadcast stations.

The Commission should not permit cable systems and other MVPDs to reduce or eliminate their own captioning costs by relying on the efforts of broadcast stations without imposing some concomitant obligation on the video program distributor. Thus, if the Commission permits MVPDs to count the captioning contained in broadcast signals towards their captioning obligations, an MVPD should not be permitted to select only certain broadcast signals for carriage. The ability to rely on broadcasters' captioning to meet an MVPD's obligations should result in a requirement that the MVPD carry all local television signals. Any other result would allow video programming distributors to gain substantial benefits from carrying broadcast signals and from the expenditures broadcasters make in providing captioning without giving any reciprocal benefit to the broadcaster. This was precisely the sort of regulatory imbalance that Congress sought to prevent in the Cable Act.⁷

⁶ (...continued)
9 FCC Rcd. 6723 (1994). Paragraph 44 of the *Notice* asks whether MVPDs should bear the responsibility for ensuring that broadcast signals they carry are captioned. Permitting cable systems and other MVPDs to alter broadcast signals to insert captioning could run afoul of the provisions of the Cable Act requiring carriage of broadcast signals in their entirety, 47 U.S.C. §§ 534(b)(3)(A), (B); 535(g)(1), (2), and the provisions of the Copyright Act prohibiting willful alterations of broadcast signals as a condition of the cable compulsory copyright license, 17 U.S.C. § 111(c)(3). Further, since providers of programming on broadcast signals will already be subject to the Commission's captioning regulations, requiring cable operators and other MVPDs to guarantee certain levels of captioning on broadcast channels would result in needless duplication of regulation as well as marketplace disputes.

⁷ See S. REP. NO. 92, 102d Cong., 1st Sess. 35 (1991)(The Committee "does not believe that public policy supports a system under which broadcasters in effect subsidize the establishment of their chief competitors.").

D. Programs With Captions

Paragraph 47 of the *Notice* seeks comment on the possibility of requiring stations to transmit captions for any program that has been captioned. The Commission should not adopt any such broad requirement. In some situations, a program may have been captioned for its initial network airings, but the program syndicator does not own the captions and does not provide them to stations. Further, as the Commission appears to recognize, programs are frequently edited, particularly for syndication, and the editing process often means that the original captioning is damaged or unusable. Merely because a program at one point was captioned should not result in an obligation that captions be added for any subsequent airing even if the original captions are not available or intact.

To the extent that a program arrives at a broadcast station already captioned, with its captions intact, they are passed along with the program automatically while it is being broadcast. So, while there would be no problem with the Commission requiring broadcasters to transmit such programs with captions, it is ultimately unnecessary because it happens as a matter of course. However, if a program arrives at a station with captions but those captions have been damaged or need to be reformatted, it would be unreasonable for the Commission to expect that the broadcaster should bare the burden of repairing or reformatting the captions on that program. To accomplish such a thing, every program that arrives at a station would need to be fully screened and then, presuming the station had the equipment and staff with the proper expertise, the broadcasters would have to determine what the original caption text was and how it was formatted and then repair the program. Indeed, many programs, such as afternoon talk shows, are aired as they are being fed to the station (via satellite), making it impossible to reformat or

repair damaged captions. The Commission should not require broadcasters to be responsible for captions damaged by others or by normal editing processes.

E. Captioning and Digital Technology

The Commission (*Notice ¶¶ 48-49*) seeks comment on whether, and if so, how it should craft captioning rules to accommodate advances in technology as a result of digital television and what steps it should take to ensure that its captioning rules do not impede the development of new technologies. The Commission further seeks comment on how it should determine captioning requirements for multiplexed programming services (i.e. services offering multiple programs simultaneously).

As long as the Commission maintains a requirement for program suppliers to provide captioned programs, the technology used to create, distribute, and display programs will accommodate the Commission's mandate. As new technologies develop, the Commission need not create specific rules for each technology but rather should craft rules that prescribe general requirements for the delivery of captions to viewers. Since captioning data is inherently associated with a particular program, even in the digital world, captions will continue be delivered along with that program.

With specific regard to the upcoming transition to digital broadcasting, the Grand Alliance Digital TV system as documented in the ATSC standard does include a mechanism for delivering closed caption information to TV receivers. The captions are carried within the video information and will provide enhanced capabilities over the existing captioning service.

Similarly, with multiplexed program services, since captions are embedded within a particular program, each individual program would contain its captions before the signal is

multiplexed. The SDTV portion of the ATSC standard contemplates the transmission of the information now carried on line 21 of the Vertical Blanking Interval with each of the multiplexed signals. Again, the implementation of new transmission standards will not require the Commission to adopt different captioning requirements.

III. Library Programming

The Commission correctly concludes that the statute does not require that all library programming be captioned. *Notice* ¶ 57. Congress understood that the burdens of inserting captioning on hundreds of thousands of hours of television programming and motion pictures that were created without captioning would far outweigh the public interest benefits that could be obtained, particularly if the cost of captioning meant that certain programs would not be aired, depriving both hearing and hearing-impaired individuals of access to program libraries. The House Report on the Telecommunications Act disavowed any such intent, as the Commission points out. *Notice* ¶ 57.

The *Notice* (¶ 51) defines library programming as “programming first published or exhibited prior to the effective date of our closed captioning rules.” This definition may be too narrow. If the Commission intends to exclude all programming that is aired after August 8, 1997 from the definition of “library programming,” that definition would implicitly deprive broadcasters and program producers of the flexibility in implementing captioning that the Commission recognizes they need. Under the Commission’s proposed implementing schedule, stations can air declining amounts of new programming without captions until full captioning requirements are in place. If those programs that were properly produced and aired without captions are not viewed as library programming, they would have to be captioned for any further exhibition even if the burden of

doing so would be high. If broadcasters chose not to air those programs due to the cost of captioning them, that would have the same detrimental effect on the public that Congress sought to avoid with respect to other programming. The Commission should, therefore, revise its definition of library programming to include both programs first published or exhibited prior to August 8, 1997, and programs that are first published or exhibited after that date without captions.

However library programming is defined, NAB supports the Commission's decision not to propose specific captioning requirements at this time. The Commission is aware that virtually all first-run programming on broadcast networks and in syndication are already captioned, and recent off-network programs placed into syndication are typically captioned as well. As full captioning requirements are phased in, the percentage of new programming that is captioned will increase, and thus an ever-greater percentage of program libraries will have captioning. Since stations frequently seek to program new or freshly syndicated programming, the level of captioning of even library programming will inevitably and steadily increase due to market forces without Commission intervention. Further, older programs that continue have a significant syndication value (*i.e.*, are widely aired) will frequently be remastered by their syndicators to improve their appearance. NAB understands that captions are generally added during that process. It is appropriate, therefore, for the Commission to observe developments in the market before determining that additional captioning rules for library programming are necessary.

The Commission should not now require that any particular percentage of library programming be captioned. Because stations that are new or have smaller audiences frequently air the highest percentage of older programming (and may not have access to network programs), a library programming captioning requirement would place the highest captioning burden on the

stations least able to pay. The Commission should instead continue to monitor both the captioning of library programming and the amount of such programming being carried. In light of that information, it can determine what rules may be needed to ensure that the maximum feasible amount of such programming is captioned.

There are other reasons why the Commission should hesitate before adopting captioning requirements for library programming. Paragraph 60 of the *Notice* references the fact that stations and other program providers may actually own copies of older programming, some of which may no longer be in active syndication. It may not be technically possible to add captioning to these programs, and there may be no economically efficient way for stations to obtain captioned copies without giving up their existing investment. The most likely result in those situations is that stations would be forced simply to abandon those programs. For many programs that were produced without captions, there also may be considerable uncertainty concerning the ownership of the copyrights to the different program elements that could be implicated by captioning. If the Commission mandates the addition of captioning, the difficulties of obtaining copyright clearances may also result in those programs being taken off of the air.

Thus, the Commission should proceed with caution before imposing broad captioning requirements on library programming. The goal of providing access to a wide range of broadcast programming for the hearing-impaired may be achieved through regulation of new programming and the normal functioning of the programming market without complex additional rules for existing programming that would either prevent some programming from being aired or add substantial burdens to both licensees and the Commission from numerous requests for exemptions.

IV. Exemptions

The authors of the captioning provisions of the Telecommunications Act understood that because of the cost of captioning and other factors, certain programs could not be expected to be captioned. The Act, therefore, included provisions authorizing the Commission to exempt programs and providers from the captioning requirements. The Commission asks for comments on the standards it should employ in considering exemptions as well as proposed categories of exempt programming.

NAB argued in section I of these comments that stations should not be required to add captions to programs that they do not produce or select. Those types of programs, including advertising and infomercials, should be exempt from captioning requirements. Also, the Commission should provide exemptions for programs that have small audiences and limited or no potential for rebroadcast because the cost of captioning for such programs generally will exceed the benefits that the public would derive.

A. The Commission Correctly Focuses on the Cost of Captioning to Individual Program Suppliers

In paragraph 96 of the *Notice*, the Commission rejects arguments that it should import a standard from the Americans With Disabilities Act and include the financial resources of parent corporations in evaluating exemption requests. The Commission correctly analyzes the exemption standard of the Act. Not only does the legislative history directly support the Commission's view, as the *Notice* (§ 96 n.186) points out, but the contrary approach would result in the removal of often valuable programming. Stations making programming decisions evaluate them based on the economics of their local situation. A station which contemplates airing a local college's football

game must determine whether it can produce and air that game on an economically reasonable basis, regardless of what other resources its licensee's parent company might have. If the cost of captioning such a program would make its production costs too high, the station will choose not to carry the game. Thus, it is the economics of each program and individual program suppliers that the Commission should focus on in determining whether to grant exemptions.

B. Advertising, Infomercials, and Political Programming

The Commission (*Notice* ¶¶ 77, 80) asks for comment on whether captioning requirements should apply to advertising generally and to political advertising specifically. The Commission should not require captioning of any type of advertising. Most national advertising is not produced by either broadcasters or the long-form program production community. The suppliers of advertising and infomercials are often not entities that are either readily subject to the Commission's jurisdiction or generally cognizant of Commission requirements. Requiring stations to ensure that advertising is captioned would result in numerous disputes, particularly where advertising is delivered to stations near the time when it is aired.

Many advertisers will in fact add captioning to their commercials to help reach hearing-impaired viewers. Thus, many commercials will include captions without any action by the Commission. Further, many commercials include textual and other material accessible to hearing-impaired individuals. Indeed, the inclusion of textual and pictorial elements in commercials makes it impossible for captions to be added by stations across the bottom of the screen without a high likelihood of obscuring at least part of the commercial message.

For local advertising, the problems of requiring captions would be even greater. Many local advertisements are inexpensively produced and requiring captions to be added would

substantially add to production costs. Requiring individual advertisers to seek exemptions for particular advertising campaigns would place a high burden on both them and the Commission.

The problems of requiring captioning for political programming would be even greater. Section 315(a) of the Act, 47 U.S.C. § 315(a), bars stations from censorship of “uses” of broadcast stations by political candidates. Placing an obligation on stations to add captioning or to require candidates to include captioning would almost certainly run afoul of the no-censorship provision. Further, captioning may very well cover up the visual sponsorship identification information that the Commission requires be included in political material.⁸ The Commission should therefore exempt advertising and infomercials from captioning requirements.

C. Sports

Much of the sports carried on television is already captioned, particularly sports on national and regional networks. However, local stations and small groups of stations also air sports that they produce, often at low cost. These programs generally can only be aired once. The cost of captioning these programs, which are always live, would substantially add to their production costs. Providing access to local sports provides significant public interest benefits. Further, sports programs are inherently visual. Thus, even without captioning, sports telecasts are accessible to hearing-impaired individuals. The Commission should exempt locally produced sports programs from captioning requirements.

Paragraph 97 of the *Notice* asks for comment on whether the Commission could condition waivers of the captioning requirements on program providers’ adding additional textual material.

⁸ 47 C.F.R. § 73.1212(a)(2)(ii); see *Codification of the Commission’s Political Programming Policies*, 7 FCC Rcd. 1616 (1992).

NAB believes that, particularly for subjects like sports that are inherently visual, this is a useful approach that will enhance the accessibility of television programming for hearing-impaired individuals in situations where the cost of captioning would be high. It would be appropriate for the Commission to encourage programmers to explore additional means of providing visual information as part of the exemption process.

D. Weather and Other Programming

The Commission does not propose to grant a general exception for weather programs. *Notice* ¶ 83. Weather portions of news programs are frequently unscripted and captions do not appear using the electronic newsroom captioning that many stations employ to insert captions in their news programs. For some stations, scripting weather stories in advance to permit captioning may not be a significant burden, but it may prove difficult for others. Further, weather programs are characterized by a high level of textual and other graphic displays of information, particularly the core forecast information that is almost always displayed visually.⁹ While the Commission may appropriately encourage stations to add captioning to weather programming, it should remain open to requests for exemption where captions would substantially burden the station, particularly if stations do add visual material to ensure access to weather information.

NAB believes that there may be other categories of programming for which exemptions are appropriate, based on the cost of captioning (particularly where shows are unscripted and the

⁹ The Commission suggests that one reason why captioning is necessary is that “satellite pictures, which are an integral part of most weather programs, are difficult to comprehend with the meteorologist’s oral explanation.” *Notice* ¶ 83. We note that many weather-related sites on the World Wide Web routinely include satellite pictures without any explanation, reflecting their providers’ apparent conclusion that they provide information that consumers will find useful on their own.

use of electronic newsroom captioning is precluded), the size of a program's expected audience, and the potential for repeat airings of the program. An example of programs for which exemptions would be appropriate are the overnight news programs offered by several networks that are assembled at the last minute from feeds across the country and thus would require live, stenographic captioning; reach only a small audience; and cannot be reused. Where the burden of captioning requirements is high enough to jeopardize the production or airing of a program, the Commission should provide exemptions rather than risking an overall loss of service to the public.

V. Technical and Quality Standards

The Commission does not propose technical or quality standards for captioning at this time.¹⁰ The Commission properly chooses to stay out of both technical and quality issues involving captioning. If, for example, the Commission mandated that live programming be captioned only through the use of stenographic captioning, it would mean that the cost of captioning would dramatically increase for the many stations that use electronic newsroom captioning. Indeed, the limited supply of stenographic captioners might mean that some stations could not add captions at all. The effect of such a rule would be to reduce the amount of captioned programming — precisely the opposite impact from what Congress intended.

¹⁰ Although paragraph 103 of the *Notice* reflects a number of concerns about captioning quality issues that have been raised to the Commission, it appears that some complaints are mutually inconsistent. For example, complaints about captions that omit certain portions of the spoken dialogue are often generated by efforts to avoid captions that must be displayed too fast for easy comprehension. Adding captions to particular programs often involves questions of judgment that are not susceptible to hard and fast rules. The Commission properly eschews trying to develop them.

Captioning quality requirements would also require the Commission to oversee details of station operations and would require significant staff resources for the Commission and for program providers who would have to provide additional levels of quality control and record-keeping. Whether any of these resources would result in any meaningful increase in the accessibility of television programming to the hearing-impaired is doubtful. Further, as the Commission itself points out (*Notice* ¶ 115), adding to the cost of required captions would result in captioning becoming too burdensome on a greater percentage of programming, again with the effect of reducing the overall amount of captioned programming.

As captioning becomes more widespread, captioning technology improves, and captioning personnel become more experienced, the quality of captioning on television programming will increase. If the Commission perceive that there are problems with captioning quality as its rules are implemented, it can then conduct an inquiry and adopt any rules needed to address specific problems. It should not, however, now adopt regulations.

Conclusion


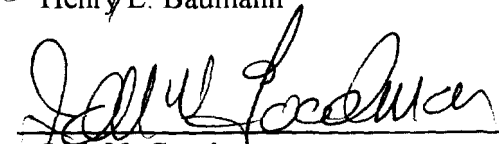
Achieving Congress' goal of improving access to television for hearing-impaired individuals involves changes in established relationships and practices in the industry. Broadcasters have already begun to caption large amounts of the programming on television stations. As discussed above, NAB generally supports the proposed implementation approach in the *Notice*, although we believe it should be changed in some specific areas. As captioning rules go into

effect, the Commission should ensure that it leaves providers with sufficient flexibility to avoid loss of valuable programming for the public at large.

Respectfully submitted,

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